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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 09-00694- RMW
)	
Plaintiff,)	
)	STIPULATION AND []
v.)	ORDER EXCLUDING TIME
)	
BENJAMIN STEPHEN BALTAZAR)	
)	
Defendant.)	SAN JOSE VENUE
)	

On July 30, 2009, the defendant appeared before Magistrate Judge Trumbull for initial appearance. A status conference was set for August 31, 2009, before Judge James Ware and the parties requested exclusions of time under the Speedy Trial Act in order for counsel for the defendant to have adequate opportunity to further investigate the case, review discovery, and confer with his client.

Pursuant to local rule, the Government filed a Notice of Related Cases on August 19, 2009, and the case was reassigned to Judge Ronald M. Whyte. By clerks's notice, the August 31, 2009 status date before Judge Ware was vacated and the case set for September 14, 2009, before Judge Whyte.

1 On September 14, 2009 the parties in this case appeared before the Court for status
2 conference. The parties jointly requested that the case be continued until October 26, 2009 at
3 9:00 a.m. in order for counsel for the defendant to have adequate opportunity to further
4 investigate the case, review discovery, including tape recordings, and confer with his client. In
5 addition, the parties requested exclusions of time under the Speedy Trial Act.

6 On October 26, 2009, the case appeared on calendar for status conference. Counsel for
7 defendant requested that the case be continued until November 23, 2009, at 9:00 a.m., for
8 continuity of counsel and in order for counsel for the defendant to have additional time to
9 further investigate the case, review discovery, including tape recordings, and confer with his
10 client. In addition, the parties requested exclusions of time under the Speedy Trial Act.

11 On November 23, 2009, the parties in this case again appeared before the Court for status
12 conference. Co-defendant Elva Gonzalez pled guilty, and defendant Baltazar, through counsel,
13 indicated that he was not happy with his representation. The court referred the matter to
14 Magistrate Judge Seeborg for November 24, 2009, at 10:00 a.m..

15 At that hearing, Judge Seeborg cleared the courtroom and canvassed the defendant and
16 counsel. One issue of potential contention that had been revealed on the record was counsel's
17 difficulty securing permission from the facility to bring the necessary equipment into the jail to
18 play the tapes provided by the Government. Consequently, the case agent brought the equipment
19 to the courthouse and the defendant and his counsel were able to listen to the tapes in the
20 Marshall's quarters.

21 As of now, counsel for Baltazar has not been relieved. Inasmuch as a new date was not
22 set on November 23, 2009, the parties hereby stipulate and agree that the matter be calendared
23 for December 14, 2009, at 9:00, or any date thereafter that is convenient for the court, for further
24 status.

25 The parties further agree and stipulate that exclusions of time from July 30, 2009 until
26 December 14, 2009 (or any other date set by the court for the next status) is appropriate based on

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28 //

1 the aforementioned reasons, which go to defendant's need for continuity of counsel and effective
2 preparation of counsel.

3
4 SO STIPULATED:

JOSEPH R. RUSSONIELLO
United States Attorney

5
6 DATED: 12/3/09

/s/
THOMAS M. O'CONNELL
Assistant United States Attorney

7
8 DATED: 12/3/09

/s/
MICHAEL ARMSTRONG, Esq.
Counsel for BALTAZAR

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10
11
12 Accordingly, for good cause shown, the Court HEREBY ORDERS that time be excluded
13 under the Speedy Trial Act from July 30, 2009 until December 14, 2009. The Court finds, based
14 on the aforementioned reasons, that the ends of justice served by granting the requested
15 continuance outweigh the interest of the public and the defendant in a speedy trial. The failure
16 to grant the requested continuance would deny defense counsel reasonable time necessary for
17 effective preparation, taking into account the exercise of due diligence, and would result in a
18 miscarriage of justice. The Court therefore concludes that this exclusion of time should be made
19 under 18 U.S.C. §§ 3161(h)(8)(A) and (B)(iv).

20 SO ORDERED.

21
22 DATED: 12/23/09


RONALD M. WHYTE
United States District Judge